

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-06-NF-048
Ora Roberts Smallwood, III)	
Licensee of WCRR (AM))	NAL/Acct. No.: 200732640001
Rural Retreat, Virginia)	
Facility ID No. 27190)	FRN: 8733727
)	

FORFEITURE ORDER

Adopted: July 30, 2007

Released: August 1, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to Ora Roberts Smallwood, III, the licensee of AM radio station WCRR in Rural Retreat, Virginia, for willful violation of Sections 11.35 and 73.3526 of the Commission's Rules (“*Rules*”).¹ The noted violations involve Mr. Smallwood's failure to maintain operational receiving equipment for required Emergency Alert System (“EAS”) monitoring functions and failure to make available a complete public inspection file.

II. BACKGROUND

2. On June 22, 2006, an agent from the Commission's Norfolk Office of the Enforcement Bureau (“*Norfolk Office*”) conducted a main studio inspection of radio station WCRR in Rural Retreat, Virginia during normal business hours. WCRR's station manager identified a portable receiver and a rack mounted receiver as the station's EAS Attention receiving equipment. The portable receiver was inoperative, but this fact or the date of the malfunction was not noted in any logs. The agent noticed that the station's rack mounted receiver was not connected to the AC outlet, but the receiver was still inoperative after reconnecting its power cord. Furthermore, there were no records to indicate that the station had ever received required Weekly or Monthly EAS Tests during the year 2006. Also, in response to a request to inspect the station's public inspection file, the station manager was unable to make the file or any of the documents required to be kept in the file available. The station manager stated that Mr. Smallwood probably knew the whereabouts of the file.

3. On or about June 29, 2006, Mr. Smallwood left a voice message for the agent in the Norfolk Office. He did not deny any of the violations found at the station, did not provide an explanation of the whereabouts of the station's public file, and requested leniency in any possible enforcement actions.

4. On October 20, 2006, the Norfolk Office issued a *Notice of Apparent Liability for*

¹ 47 C.F.R. §§ 11.35, 73.3526

Forfeiture to Mr. Smallwood in the amount of eighteen thousand dollars (\$18,000) for the apparent willful violation of Sections 11.35 and 73.3526 of the Rules.² On November 11, 2006, the Norfolk Office received Mr. Smallwood's response to the *NAL* requesting cancellation of the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Commission's Rules ("Rules"),⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Smallwood's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 11.35(a) of the Rules states that Broadcast stations are responsible to ensure that EAS Encoders, EAS Decoders and Attention signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation. On June 22, 2006, neither of station WCRR's EAS receivers were operative, so the station had no way to monitor or receive EAS messages. There were no records to indicate that the station had ever received required Weekly or Monthly EAS Tests during the year 2006. There were also no records documenting when the EAS receivers became inoperative.

7. Section 73.3526(a)(2) of the Rules states that every licensee of an AM station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. On June 22, 2006, in response to a request to inspect the public file during normal business hours, the station manager was unable to make the file or any of the documents required to be maintained in the file available. There was no evidence that the station maintained a public inspection file.

8. In response to the *NAL*, Mr. Smallwood states that he was not present during the inspection, and the new owner to the station pulled the public inspection file the week of the inspection. He also states that the new owner inspected the station's EAS that week. We do not find Mr. Smallwood's arguments persuasive. Mr. Smallwood was still the licensee of station WCRR on June 22, 2006⁶ and was responsible for compliance with all Commission rules. If the new owner of the station removed the station's public inspection file, Mr. Smallwood was responsible for ensuring that the file was returned to the station's main studio. Moreover, it is irrelevant whether the new owner inspected the EAS equipment prior to the agent's inspection. There is no evidence or allegation that the owner tampered with the station's EAS equipment or somehow caused it to be non-operational.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532640001 (Enf. Bur., Norfolk Office, October 20, 2006) ("*NAL*").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Mr. Smallwood's assignment application was granted October 12, 2006 and consummated October 16, 2006.

9. Finally, Mr. Smallwood requests cancellation of the forfeiture based on his inability to pay. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.⁷ Mr. Smallwood, however, has not provided sufficient documentation of his income and the station's gross revenues. Therefore, we are unable to determine if a reduction of the forfeiture would be appropriate.

10. We have examined Mr. Smallwood's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Smallwood willfully violated Sections 11.35 and 73.3526 of the Rules and that no reduction of the proposed \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,⁸ Ora Roberts Smallwood, III **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for willfully violating Sections 11.35 and 73.3526 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Ora Roberts Smallwood, III at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

⁷ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.